

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CYNTHIA S LEHRKAMP**  
Claimant

**CARROLL-KUEMPER**  
Employer

**APPEAL 22A-UI-11698-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.4(5) – Eligibility Between Academic Years or Terms

**STATEMENT OF THE CASE:**

On May 3, 2022, Cynthia Lehrkamp (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 30, 2021 (reference 03) that denied unemployment insurance benefits as of May 24, 2020 based on a finding that she was ineligible for benefits between academic years or terms.

A telephone hearing was held on June 23, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-11698 and 22A-UI11699 are related and were heard together, forming a single hearing record. Carroll-Kuemper (employer/respondent) was noticed on 22A-UI-11698 and participated by Hearing Rep. Paul Jahnke.

No exhibits were offered or admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on March 30, 2021. That was claimant’s correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by April 9, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant does not recall whether she received the decision denying benefits. She states she was not having issues with receiving mail during the period in question. She acknowledges that she did not read all correspondence from IWD closely. Claimant did not file an appeal until May 3, 2022, after receiving a decision finding she was overpaid benefits as a result of the March 30,

2021 decision. At that time the appeals bureau also set up an appeal of the March 30, 2021 decision.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 30, 2021 (reference 03) that denied unemployment insurance benefits as of May 24, 2020 based on a finding that she was ineligible for benefits between academic years or terms is therefore final and remains in force.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
  - (b)
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission

was due to division error or misinformation or to delay or other action of the United States postal service.”

The weight of the evidence is that claimant received the decision in a timely manner and had a reasonable opportunity to file a timely appeal but did not do so. Claimant has not established a good cause reason for delay in appealing and the administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

**DECISION:**

The administrative law judge concludes the claimant’s appeal was untimely. The decision dated March 30, 2021 (reference 03) that denied unemployment insurance benefits as of May 24, 2020 based on a finding that she was ineligible for benefits between academic years or terms is therefore final and remains in force.

**REMAND:**

The administrative law judge notes that claimant appears to have non-educational wages in the base period of the claim effective March 22, 2020. This matter is REMANDED for a determination of whether claimant has sufficient non-educational wage credits in the base period to be eligible for benefits. See Iowa Admin. Code r. 871-24.52(6).



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Andrew B. Duffelmeyer  
Administrative Law Judge

June 29, 2022  
Decision Dated and Mailed

abd/abd